The State OF South Carolina

In The State Supreme Court

Certiorari to Charleston County

Honorable Diane S. Goodstein, Circuit Court Judge

Dean Seagers,

Petitioner,

Vs.

State Of South Carolina,

Respondent,

RECEIVED
OCT 17 2024
SC Court of Appeals

Appellate Case No. 2024-000213

Pro Se Johnson Petition for Writ of Certiorari

Dean Seagers #294406

Lee Correctional Institution

990 Wisacky Highway/ F2A-2110

Bishopville, South Carolina 29010

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Question Presented

Does the accumulation of several errors, which by themselves are not prejudicial, warrant relief? , if not, can multiple errors, which were not prejudicial separately, can be prejudicial to deny a criminal defendant a right to a fair trial when they are viewed together?

A) Cumulative Analysis and the United States Supreme Court

B) Strickland language supports cumulative review

C) Supreme Court precedent approves of cumulative analysis

Factual Analysis

The facts of this case reflect that applicant was actively assisting counsel in case, and this is proven despite the pcr court decision to the contrary, as well as, the documents in the appendix. **(App.pg. 727-736) It** is likewise applicant contentions, most of these motions address allegations put forth by applicant that were proven a by testimony from the pcr hearing, for instance, applicant submitted a motion for dismissal to counsel (App.pg. 727-29) which addresses the fact that prosecution could not establish actual or constructive possession from applicant mere presence at the place where the police conducted a raid of the premises (App.pg 728) especially in light of the fact that counsel was informed that co-defendant Mr. M. Dennis wrote a statement claiming the drugs at the residence and that applicant nothing to do with the drugs and was just visiting.(App.pg 598; lines 6-13;pg.)

By Ms. Dixon:

Q: All right. Mr. Dennis, I just want to clarify your testimony today is that you owned the drugs that were recovered on August 29th, 2013.

A: Yes, I had them in my possession.

App.pg. 610; lines 18-21

Applicant trial counsel failed to research, notify and advise applicant that the two trafficking cocaine and three distribution charges could have been drop as they were after applicant conviction. But applicant was advised that the only way he could get a life sentence was if I got convicted of any trafficking charge and trial counsel advised him that he was going to trial for the trafficking charges first. Had applicant known the trafficking could have given applicant

three strikes, or they would be drop without prosecution, along with the other distribution of crack charges applicant could have worked out a deal on the distribution **(App.pg 25; line 9-25)** However, both pcr and trial counsel failed to inform applicant that a scrivener's error was made on the charge he was convicted for **(App.pg.785.n23)**

Had applicant known a scrivener's error was committed on the distribution charge along with the facts in Stevens, it is a reasonable possibility applicant may have received a lighter sentence if court had one charge rather those six (6) charges.

I. Recidivist Provision: (PCR Order Pg. 21-23)

Trial counsel failed to research whether the sentence enhancement was proper, and had counsel done so, he would have found legal uncertainty in this court precedent which amounts tom ineffective assistance of counsel regardless of the ultimate resolution. Likewise, the pcr court erred in finding trial counsel properly communicated all plea offers to applicant and explained to applicant that LWOP was his only possible sentence if convicted at trial for one of four distribution of cocaine base first charge. Pcr court ruled sentencing sheet contained what appears to be a scrivener's error. Specifically, in classifying the offense it cites, section 44-53-375 (B) (1). However, the indictment is broader in that it cites section 44-53-375 in its entirety. Ultimately, this was clearly not applicant's first offense, as shown by the sentencing sheets entered at pcr hearing of applicant seven prior drug convictions.

Prejudice:

Because counsel did not research applicant distribution cocaine base first charge before trial, along with pcr counsel who argued the same charge at pcr hearing would have seen the scrivener's error's on the sentencing sheet to inform his client that his sentence could be

enhanced. By not doing so applicant thought the only way he could receive a life sentence (LWOP) was if he was convicted of all four distribution of cocaine base charges he had pending at time of trial and that the four distributions would have to be school zone as well as applicant would have to be convicted of trafficking charges he had pending for leverage, that were eventually dropped.

Had applicant known of the scrivener's error on the distribution charge, he could have pushed for good plea, since applicant did not know he could get LWOP for distribution first if no school zone was involved and counsel never researched or informed client of legal uncertainty.[i]

During the Pcr hearing the court said the sentencing sheets contain scrivener's errors. Specifically, in referring to the triggering offense it cites South Carolina Code Ann. § 44-53-375 (B) (1) two factors must be highlighted on this issue;

First, the Notice to seek LWOP sentence was not filed in the clerk of courts office as required under South Carolina Code Ann.§17-25-45 (cum.supp23). This argument is supported by the argument of PCR counsel at hearing of her diligent search to obtain this document, (**App.pg 548; lines 7-25; pg.549;lines 1-25**) as well as that of defense counsel who also did not have a copy of this document. Mr. C. Marshall testified as follows:

Q: Okay. And in terms of the LWOP notice, do you recall getting served LWOP notice?

A: You know I did not see it in my file, but I can't imagine that I wouldn't have gotten it. I mean if I didn't then that is a problem

Q: That is something you would have raised if it came up at trial, and you had never seen the notice?

A: I would like to think I would have, because that would—that wouldn't be good for a lawyer not to get that.

App.Pg. 596; lines 12-21

Q: But again—so no specific recollection of actually seeing the LWOP notice?

A: No, No specific recollection.

App.Pg 602; lines 2-4

Ms. Linder testified that:

Q: Because we—I mean, where was this notice of intention to seek LWOP? Where was this document located?

A: Like I said, when we were preparing an talking about this hearing, we ordered the box from the warehouse, from where all of our stuff is stored, and it was brought over, and we literally went through, like, the trial notebook and the case file, and it had all those old charges,……..

Ms. Franklin-Best: So, I'll just inform the court, I mean, we've been seeking this for the last two years. And not MS. Dixon, I mean, you're the latest person on this case, but I've made multiple requests to get this so that we could actually check these convictions.

App.pg. 630; lines 16-24; Pg. 631; lines 1-5

Despite Ms. Linder testimony at hearing that:

Q: So just to clarify, your LWOP notice was based on these state charges, and not any federal charge?

A: Correct. Like I said, it specifically mentioned those in there. Mr. Seagers had more than enough state-statutorily charges that would qualified as serious, that would qualify as strikes in the modified two, three-strike system we have here.

App.Pg 623; lines 17-23

Because the charges that are listed in **(App.pg 758)**, specifically charges 2-4 are all concurrent sentences and disposed of on the same day. See, State v Bryant, 384 S.C. 525 (2009) As such, this disposition of the charges on the same day would not trigger the LWOP notice as Ms. Linder testified to at hearing. For instance **(App.pg.748, 753,751,756,757)** is listed as non-violent thus this is not applicable under the LWOP notice statute.

Likewise, Ms. Linder testimony contradicts what the court relied upon during sentencing, as the court and the state during sentencing did not rely what was on the notice seeking LWOP sentence, in fact the record clearly reflects that the prosecution at sentencing used something else as a basis for enhancement. **(App.Pg. 549; lines 6-13)**.

Prejudice:

Applicant trial counsel was made ineffective by the state when they presented the charges to the court that are not listed in the LWOP notice that **Was Never Filed In The Courts As Required By Statute,** similarly, counsel told court that he did not have a copy of his client rap sheet. **(App.pg. 251; lines 25; pg. 252; lines1-4)** Thus, pcr counsel informed the court, that applicant had been requesting this document from the state for two years. But, Pcr counsel could not

locate it in clerk's office and was unable to retrieve it from state or counsel the state can be said to have interfered with counsel duties to client. **(App.pg. 630; lines 16-25; pg. 631; lines 1-5)** See, South Carolina Code Ann. § 17-25-45 (a) (cum.supp.23)

For this reason, the state must be restricted to what is in the trial transcript and not this document that was never filed in the clerk of courts office which is universally required to give the court jurisdiction over all motions filed by opposing counsel in criminal proceedings. No transcript exists of the hearing Ms. Linder testified too that was conducted on June 17th, 2013.

Third, under Watson v State, 287 S.C. 356,357 (1985); Patrick v State, 562 S.E.2d 609 (2002) the right to have the jury impaneled to consider a recommendation of mercy can be waived. Before a right can be knowingly and intelligently waived, however, the applicant must be informed of it. Applicant should have been informed by counsel; at pcr hearing applicant testified that he was never informed that he could have jury impaneled to consider a plea of mercy which would have resulted in a lesser sentence. Counsel testified that he did not request the impaneling of a jury because he did not believe applicant was entitled to have this done.

Under the present facts of case at bar, the evidence is unrefuted that counsel never informed applicant about impaneling jury constituted ineffective assistance of counsel. Counsel never corrected the scrivener's error, that the PCR courts based its denial on error not being corrected. Trial counsel never informed applicant he could receive life sentence or plea for mercy from the jury. Applicant was informed that all he could receive was a life sentence for the two trafficking charges he had pending along with distribution of cocaine base first offense. The court ruled this was not supposed to be applicant first offense for distribution of cocaine base because of his

record and it was our fault it wasn't corrected (PCR order pg.22). However, the trafficking charges were dropped after conviction for distribution cocaine base first offense.

At the pcr hearing the applicant informs the court that:

MS. Franklin-Best:

Sorry. MR. Seagers wants to object to the signing of the acknowledgement for the LWOP notice. At the time that these were signed, the charges were pending against him that Moses Dennis ultimately sort of pleaded guilty to. If I could just put that on the record.

App.pg.663; lines 17-22; pg.760-762-763

Requiring counsel to inform defendants of the mandatory nature of their potential sentence is also consistent with similar decisions in other jurisdictions. For example, in Johnson v State, 712 S.E.2d 811, 814 (Ga.2011), The Georgia Supreme Court reversed the dismissal of a pcr application on grounds of ineffective assistance of counsel where trial counsel failed to advise the petitioner that if he rejected the State's plea offer, he would face a mandatory sentence of LWOP. The court found that without knowledge of a mandatory LWOP sentence, the defendant "could not make an informed decision about whether to accept or reject a State's plea offer [and thus the petitioner] has fulfilled his burden of showing that his counsel's representation fell below an objective standard of reasonableness" Id. at 813, as counsel **Cameron Marshall** testified at hearing that:

A: ... I can't remember specifically, because I think—it seems like there was one section of the statue that made it discretionary maybe, or made it mandatory.

App.pg 597; lines 4-7

For this reason, the State cites State v Payne, 332 S.C. 266, 272 (Ct.App. 1998) (App.pg.784-85) and applicant avers that this case is misplaced. Applicant avers that under State v. Bryant, 384 S.C. 525 (2009) as noted previously, these charges for which the state seeks to use for enhancement were adjudicated on the same day and thus, the state is precluded from using these charges. (App.pg 785) The pcr court ruling is not consistent with the facts presented at hearing. More importantly, all these charges are non-violent and the statute does not permit the use of non-violent charges. (App.pg. 738)

Also under Dretke v Haley, 541 U.S. 386 (2004), the answer to this narrow question presented is whether applicant sentence was permissible, there is an obvious reason that the failure of trial counsel to examine applicants prior convictions file fell below an objective standard of performance. Counsel knew that the state was seeking LWOP sentence by proving applicant had significant records of felony convictions indicating the use or threat of violence, an aggravator under state law, and as he stated that he did not have applicant NCIC sheet)App.pg. 251; lines 25; pg. 252; lines 1-4) also applicant testified that he asked counsel to get his record straight (App.pg 579; lines 15-25; pg. 580-581; lines 1-16)

Prejudice:

and it is also clear that counsel was unaware of the fact that the judge had no discretion to sentence applicant to anything but a life was revealed in counsel testimony at hearing, (App.pg 597; lines 4-7) as well as the testimony of **prosecutor Linder** who said that:

A: It was discretionary; it was under the modified two, three-strike system in South Carolina....

App.pg 636; lines 14-15

If counsel had properly informed and researched the law then it is clear from applicant testimony he would have accepted the offer (App.pg 554; lines 11-24). Similarly, applicant testified at hearing about the LWOP notification as follows:

A: I asked her can I get the lightest sentence possible, and that's because I was under the assumption that I had to get convicted of all six charges to get a life sentence, not just one....

App.pg 578; line 20-24; pg.580-581

Furthermore, under Bolin v South Carolina Department of Corrections, 415 S.C. 276 (2016) counsel and prosecution denied applicant offenses were non-paroleable offenses when in essence the effective date of the Omnibus crime reduction and sentencing reform act made these charges for which LWOP was sought are in fact parole eligible. Under South Carolina Code Ann. §44-53-375(3) reads in relevant part that:

(3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this section for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have his sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision,

work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

§44-53-375 (3)

Prejudice:

Ms. Linder testified she had a second offense she presented to trial counsel which he stated he never had in any of his noted or informed applicant of. Apprendi, id. Where applicant prior convictions were never presented to jury and proved beyond a reasonable doubt, the 14th amendment commands the answer when the statute is involved. Also the 1997 charge exceeds the 10 year maximum (App.pg.637; lines 15-25; pg. 623; lines 1-19); Blakely v Washington, 124 S.CT 2531 (2004)

The court is being called upon to address the narrow question presented whether applicant sentence exceeds what the Apprendi court counseled as an impermissible sentence given that it exceeded the 10 year maximum for the offense charged-was foreshadowed by the holding in Jones v United States, 526 U.S. 227 (1999) that with regard to federal law, the fifth amendment's due process clause and the sixth amendments notice and jury trial guarantees require that any fact other than prior conviction that increases the maximum penalty for a crime must be charged in an indictment submitted to a jury and proved beyond a reasonable doubt. The Fourteenth amendment commands the same answer when the statute is involved.

Ms. Linder stated she used a 1997 charge against applicant when he was 17 years old. Applicant caught these current charges when he was 32 years old in 2012. The 1997 charge was over with in 2000 which is still outside of the ten year maximum. As stated in Apprendi and Blakely. Also pcr counsel found no records of my conviction from MS. Linder or clerk of court showing

my prior convictions were submitted to a jury. (app.pg. 623; lines 1-19), I received probation for 1997 charge. See, Apprendi V New Jersey, 530 U.S. 466 (2000) United States v Lull, 2016WL300286

II. Prosecutorial Misconduct: (PCR Order Pg. 790, 795, 780)

The pcr court order addressing prosecutor misconduct does not have the facts to support their denial of this claim. Because, the court does not take into consideration that when the witnesses testified they was told not to prepare reports, that such action sanctioned by the state violates applicant right to counsel and a fair trial when they do not turn over documents such as lab reports for forensic analysis, and police summary reports of case.

The facts of this issue have been fully developed addressing the misconduct of the state as follows;

Applicant claims that prosecutor misconduct violated his rights under the federal/State constitution, based on Ms. Linder testimony at hearing, and ineffective assistance of counsel based on fact that counsel never presented a valid trial strategy on why he did not call Ms. Linder to testify at trial. Counsel placed the blame on himself for not calling her to testify.

Prejudice:

Prosecutor Linder testified to being on the scene (App.pg.634;lines13-25;pg.639; lines21-25;pg.640; lines 1-7;pg.631; lines1-5) During the execution of the search warrant, then retrieving the notice from then warehouse which should have been in the clerk's office (App.pg. 646; lines13-15) All prosecutors Sowards, Mulky, AG Dixon, trial counsel and clerk as noted , did not have a copy of this notice, and the LWOP notice presented at hearing had charges that

were supposed to be dismissed since Ms. Linder prosecuted Mr. Dennis. These charges involved the same trafficking charges on applicant LWOP notice and Mr. Dennis wrote a STATEMENT CLEARING APPLCIANT OF THESE CHARGES. Mr. Dennis pleads guilty to these charges on March 2013 and received five years. See, United States v Golding, 168 F.3d 700 criminal law key (1-2); see also, State v Inman, 395 S.C. 539 Crim.law key (11-13) (2011)

Ms. Linder had control over every aspect of applicant hearings, thereby denying him fair hearings because she testified at pcr hearing that she made sure applicant bail stayed high(App.Pg. 738-39; pg.735-36;pg.626; lines 12-18) As she stated, applicant had violated his federal parole which was incorrect, since federal authorities do not violate parole until conviction and also allowed applicant to be released on PR bond after Ci and Mr. Dennis statements were presented to judge and applicant bond was reduced from $2.5million dollars to $100,000.

Ms. Linder likewise testified at pcr hearing as follows:

Q: Okay. So this video, I mean, Dean was never actually on the video, was he?

A: My recollection—again, I haven't watched the video in a long time.

Q: Right

A: It's a second-story window. I don't remember ever seeing his face on it.

Q: Right

A: You can hear a voice, so a voice. But a face I don't recall.

Q: It's been awhile. Right. Okay. So, Mr.,--Dean's fingerprints were not found on the cup, were they?

A: My recollection is that—short answer, no……..

Q: Okay. So unidentified print. This gray car that we kind of heard about, I mean, no one ever actually, you know, sort of tied that back to Dean Seagers did they?

A: Not that I recall, no

App.pg. 660; lines 6-25; pg.661; lines 1-2

The only witness CI said applicant didn't sell him no drugs in his statement (App.pg. 651; lines 17-25) and prosecutor Linder who testified she prepared the case for trial in June of 2013 (App.pg. 622; lines 9-25) admitted to never checking the reliability of the CI along with prosecutors Sowards/Mulky who each said they didn't as well. Also nothing was ever presented to the judge concerning the reliability of the CI. See, United States v. Auten, 632 F.2d 478 (5th Cir.1980) the prosecution failed to disclose that one of its key witnesses had been convicted more than one time which create ineffective assistance of counsel. Since counsel and state did not know this and the documentation says that he had pending charges on Ci witness form (App.pg 672-673; 679 lines 1-6).

Ms. Linder violated applicant speedy trial rights, by having the case delayed by informing the court she was awaiting the disposition of Mr. Dennis case which she prosecuted in 2013 and Judge Young told prosecutor Linder to have the case handled before the end of fall in 2014. Then in December 2014 after Ms. Linder failed to make this date applicant wrote out dismissal for counsel to put in and trial counsels failed to do so (App.pg.727-29); Lafler v Cooper, 132 S.ct.1376, 1384 (2012) [Failure to communicate plea offer] **Trial counsel, Mr. Sowards and trial told court there were no plea offers (App.pg 25; lines 9-25) and trial counsel on the morning of trial testified at hearing a plea was given to applicant but he's not specific if he**

informed me or not. (App.pg.602; lines2-4) and there is no evidence any of prosecutors submitted any of his prior convictions to the jury. See, Apprendi V New jersey, 530 U.S. 466 (2000); United States v Cotton, 122 S.Ct. 1781 (2000).

Mr. Sowards read off something entirely different from what is listed on the LWOP notice presented to the pcr court (App.pg. 250; lines 7-19)and when trail court question applicant about the accuracy of these offenses, **applicant said some of them were correct,** and coupled with this counsel statement to the effect **"that he must do his job more competently and senility has got the best of him"** was made after court asked counsel about applicant prior convictions, which constitutes ineffective assistance of counsel for saying LWOP notice was filed correctly. (App.pg .252; lines 1-25) and contrary to court ruling I never agreed with Ms. Linder (App.pg. 624; lines 24-25;pg.625; lines 1)

First, Thus, under United States v Cronic, 466 U.S. 648 (1984) state made counsel ineffective when prosecution informed the witnesses for the state to not file reports because they were going to testify (App.Pg. 41; lines 6-16; **[Det. Burke said he never handed over the files; Burke said files was on his hard drive for his personal use]** Pg. 172: lines 19-25; **[Det. Grill said he didn't write documents because he's here today!! Said he was told not to write reports]** Pg.380; lines 9-16; **[Said she wasn't asked to write report and said it was no reason to do so because she was coming to testify]** this is a blatant Brady violation for the state to have its own witnesses withhold evidence or in this case reports to interfere with counsel obligation to defend his client and it is the actions of the state that made counsel ineffective. What is clear Det. Burke testified that he has the files on a disk that he never turned over to the prosecution. Thus, under United States v Cronic, state made counsel ineffective. The actions and the testimony at trial of state's witnesses revealed that they took actions that violate Brady rule. But the pcr counsel

found counsel was not ineffective when the witnesses never provided a report concerning their forensic findings (App.pg.793) as court ruled that:

"Initially, applicant did not enter into evidence this document that was allegedly on detective Burke's hard drive, leaving this court to merely speculate about the likelihood that the disclosure of the document would have changed the outcome…"

App.pg 793

Second, respondent disregards the facts presented at hearing which according to the order was not addressed and it appears from order that the court never considered the improper comments from the state are numerous and affected the entire process for instance on pg. 472;lines 21;pg473-474;lines 4-5;pg 475;lines 1-6;pg.476;lines 2-25;pg.477;lines 3-25;pg.478;lines 11-16;pg.479;lines6-14;pg.480;lines 1-25;pg.482;lines 1-21;pg.483;lines 1-15,15-16,22-25;pg.484;lines1-25;pg 485;lines 1-25;Pg. 486;lines 1-25; pg.488;lines 18-21; Pg.489;lines 8-16; pg.490;lines 2-25; Pg. 490;lines 12-25; Pg. 492;lines 1-25;pg.493;lines 3-6,11; these comments are what I allege denied me a fair trial and counsel was ineffective for not addressing this during trial. Let's be clear, while the prosecution has the duty to address evidence presented at trial. They do not have the right to present a false narrative to the jury or present facts not in evidence as they have done throughout the closing arguments.

Had the improper comments been limited, then the pcr court ruling would be supported by evidence. However, the comments were not limited and were the cornerstone of the state's entire closing argument that deprived applicant of a fair trial and counsel failure to object prejudiced the applicant.

Second, the cases cited by the court in its order are misplaced. See, State v Busse, 439 S.C. 104 (2023); Vasquez v State, 388 S.C. 447 (2010); Vaughn v State, 362 S.C. 163 (2004). Unlike the cases cited by the court, in none of these cases did the prosecution engage in comments that were not isolated but continuous. The court attempts to down play the comments as those in Vasquez, Busse, and Vaughn, but there is no comparison (on pg. 472;lines 21;pg473-474;lines 4-5;pg 475;lines 1-6;pg.476;lines 2-25;pg.477;lines 3-25;pg.478;lines 11-16;pg.479;lines6-14;pg.480;lines 1-25;pg.482;lines 1-21;pg.483;lines 1-15,15-16,22-25;pg.484;lines1-25;pg 485;lines 1-25;Pg. 486;lines 1-25; pg.488;lines 18-21; Pg.489;lines 8-16; pg.490;lines 2-25; Pg. 490;lines 12-25; Pg. 492;lines 1-25;pg.493;lines 3-6,11) these comments were not objected by counsel and as noted previously that he did not do so because the of judge's impartiality when it came to counsel objecting.

Prejudice:

Brady v Maryland, 373 U.S. 83 (1963) controls the first portion of the argument that prosecution interfered with counsel ability to cross-examine witnesses and perform any pre-trial investigation when the police engaged in actions that violated applicant right to counsel and a fair trial.

Furthermore, Fortune v State 428 S.C. 545 (2019); Berger v United States, 295 U.S. 78 (1935) controls disposition of this case, is on point with all the facts established herein. Because the prosecution allowed their witnesses not to turn over documents for trial counsel was not only Unethical, but unfair and coupled with prosecution inflammatory comments. Applicant was denied his right to a fair trial, and if trial court was not biased as counsel testified under oath and since the court accepted counsel testimony (App.pg 771)

Det. Burke testified at trial as follows:

Q: Are you aware that evidence has been presented to this jury that a grey car, specifically I believe a-it was described as a gray a Dodge Charger, is alleged to have been seen fairly near proximity to Ashton street on June 20th of 2012?

A: I am aware of that, yes sir.

Q: And you actually heard testimony being given, correct?

A: Yes sir

Q: is that a piece of potential evidence which you would deem significant?

A: I would say it depends how you look at it.

Q: Okay. Tell us how you look at it?

A: Well from the totality of the investigation, that specific vehicle was deemed by me not to be of any significance. There was no intention tom placing GPS tracking device on it. The vehicle didn't come back to the defendant. It was more for just my knowledge that if that vehicle was there, he was probably going to be there.

Q: Did you take any steps to try to determine the owner of that vehicle?

A: I did, but i-in regards to this-specific case it wasn't relevant.

Q: I'm sorry; you did or did not take any steps to try to identify the owner?

A: I-did, but it-it came back to-it wasn't the defendant, so it wasn't of significance.

App.pg.312; lines 2-25; pg. 313; lines 2-13

Det. Grill said he just got on the case so he was not sure, (App.pg. 208; lines 1-15; pg. 173; lines 16-25; pg. 174; lines 1-17) but let the record reflect that applicant testified at hearing that he never drove any gray car and this testimony concerning it was extremely prejudicial, to defense especially when the state was unable to turn this over to the defense. Applicant testified that:

A: Now with the gray car, I never had gray car, I never drove in gray car. And When Cameron Marshall asked them the documents on the gray car; we never got any documents on the gray car. Nobody seemed to know about this gray car

App.pg.571; lines4-8; pg.643; lines 12-23

Accordingly, while counsel was ineffective for not objecting to this evidence admission (App.pg. 476; lines 14-25; pg. 205; lines 15-17) he was made in effective by the prosecution for not ensuring counsel had this information, since counsel informed court that gray car does not appear in any reports. And counsel first time hearing about this vehicle came from Det.Grill and counsel averred that he met with Det. Grill several times but was never informed of this.

Herein as in Vasquez, the prosecutor argued to the jury that they should not reward Mr. Seagers for being a good drug dealer because of the unique method of distribution. (App.pg. 492; Lines 14-25; pg. 493; lines 1-6) **and trial counsel testified he wished he had objected** (App.pg.600; lines 1-20)

Second, the violation of Brady likewise occurs when the states witnesses. Burke, Det. Grill and forensic analyst testified at trial they were told not to prepare reports. (App.pg 41; lines 6-16; pg. 172; lines 19-25; pg. 380; lines 9-16) The withholding of this information made counsel ineffective and such actions tip the scales in favor of the prosecution to win at any costs. Thus, the state cannot now claim that counsel was not ineffective when they contributed to the verdict.

III. Failure to Inform Defendant of Plea offer:

Trial counsel and state told judge on the morning of trial that no plea offers were on the table (App.pg 25; lines 9-25. But at hearing, counsel testified that he would have rejected any offer as it was his standard practice to do so. Likewise, no evidence exist that defendant rejected the plea offer in April 2013. Contrary to the order **(App. pg.789)** the record does not support the idea

that applicant would have not accepted the offer had counsel informed applicant of the offer, moreover, no evidence exist to support denial of this claim. Mr. Marshall testified at hearing as follows:

Q: Okay. And let's see—tell us about plea negotiations with the state?

A: We did. At one point, there was 15-year offer, I think, in order to avoid trial. And I specifically, have that in my notes. I have—and would relay that to Dean.....

App.pg 594; lines 25; pg. 595; lines1-5

A: I see two other references in my notes concerning plea discussions. I think there was a reference in there o 10 to 30, I think, I had written. And then maybe a 7 to 25 written somewhere. So there were discussions going on.

And then the day of—the morning of trial, I remember going back in chambers with the judge and probably at least two or maybe three of the prosecutors. I remember Judge Harrington saying, well, if he wants to plead--and I don't have my note of this, but I think it was more than 15 that had been discussed.

App.pg. 595; lines10-20

Q: did you relay to him that offer?

A: I don't have a specific recollection of doing

App.pg.24-25; pg.596; lines1

Prejudice:

Trial counsel failed to research the fact that applicant could not have accepted the plea on June 20th, 2013 because Ms. Linder was attempting to get applicant to plead to two trafficking charges that co-defendant pleads to and received five years and wrote a statement clearing applicant of

all charges stemming from the drug raid. Counsel failure to communicate all plea offers was proven at hearing and the pcr court order pg789 ruling;

In contrast, trial counsel testified he met with the judge and the solicitor the morning of trail and discussed a plea to seventeen to twenty –year range. He testified he would have relayed any offer to applicant as part of his general practice (App. pg.789) As such; counsel failed to ensure that applicant understood the consequences of rejecting a plea bargain and proceeding to trial where the state was seeking mandatory life without parole.

When counsel allowed the offer top expire without informing applicant or allowing him to consider it, counsel did not render effective assistance of counsel.

Prejudice:

Failure to inform his client of the dangers of rejecting the plea offers from state, Lafler v Cooper, 566 U.S. 156 (2012) O. Williams V State, #2011-2011 is clear error and counsel was under obligation to inform defendant of the offer not as applicant testified too at hearing (App.pg. 560; lines 10-15) Under Missouri v Frye 566 U.S. 134 (2012) when counsel allowed the offer to expire without advising the applicant or allowing him to consider it, counsel did not render the effective assistance the constitution requires (app.pg 593; line 12-14; pg. 595; lines 15-25; pg. 596; lines 1; pg. 601; lines 20-25; pg. 602; lines 1) Counsel failure to communicate the plea the morning of trial after he said plea was given to him by the prosecutor and the judge, in the judge chambers (pg. 601; lines 20-25; pg. 602; lines 1) Even if counsel did tell his client about plea the morning of trail, to the point where trial counsel had left judge chambers and went right back to the table to tell Dean!! But that is not enough time for applicant to consider a plea while dealing with LWOP sentence.

Furthermore, the state cites O. Williams but only references the 2008 decision that was affirmed, as such the applicant references O. Williams 2011-12 case where our Supreme Court reversed the decision of the Court Of Appeals.

IV. Search OF Cell-phone: (PCR Order Pg. 13-15)

Applicant asserts that counsel was ineffective for not arguing the search of his cell phone. It is conceded that the police did execute a search warrant for the search of the home, but what the court is misapprehending is that counsel was ineffective when the CI said that he had applicant phone number in his cell phone and counsel never investigated the phone himself to determine if the number was in fact that which belonged to the applicant. (App.pg.) this was critical since the CI testified that he contacted the applicant by phone which led to this controlled buy.

Prejudice:

Trial counsel failed to get applicant a suppression hearing pertaining to the cell phone used by the CI. to make calls to me, to buy the suspected drugs& prosecutor use the cell phone/information as evidence to obtain a conviction. Det. Burke testified that he allowed the CI to keep the phone with the name "Baby" in it as the one he contacted (App.Pg. 269; lines 1-25) Also the Ci testified he always talks with me (App.pg 29; lines1-25) but Van Horn said no call logs came from phone (App.pg 398; lines 9-10; Pg.400; lines 10-15; Pg.401; lines 15-20; this testimony contradicts the evidence presented at hearing and trial. Further, counsel failed to research so he could determine himself if CI had any contact with applicant. Had counsel searched CI cellphone it would have shown that CI never contacted me and discredits the testimony of CI. This would also prove that Ci was lying when he said that he got threatening phone calls (App.Pg 228; lines19-25; Pg.229; lines20-25

The CI testified that he does not recall seeing me on June 20th, 2012 and he never gave Det.Burke a description of me, and was shown one photo. (Tr.Tr.Pg.33; lines12-25) Prosecution failed to give counsel for defendant any documentation reflecting a photo line-up was done, CI testified that he seen only one picture but did not see me on June 20th, 2012 (Tr.Tr.Pg 34; lines1-14; Pg.242-243; lines1-25)

Applicant asserts that counsel was ineffective for arguing the search of his cell phone. It is conceded that police did execute search warrant for the search of the home, but what the court is misapprehending is that counsel was ineffective when CI said that he had applicant phone number in his cell phone and counsel never investigated the phone himself to determine if the number was in fact that which belonged to the applicant. This was critical since the CI testified that he contacted the applicant by phone which led to this controlled buy.

Prejudice:

Mr. Sowards testified that:

Q: And so you never got any call logs from the telephone either?

A: That's—my only recollection is that, you know sometime when you—when a phone is examined, you get the entirety of the contents, and sometimes you essentially get like, a basic Amount of detail about the phone. Like for example, you might get, you know, the phone number, assigned, et cetera and I only recall getting the phone number.

Q: Okay. But you had—I mean, you had a phone tech, Rodney Vanhorn [ph.]?

A: Right

Q: okay. Okay and again nobody, other than sort of Baby, which was on Robert Drayton's phone I mean, there was no other way of sort of connecting any of this to Dean Seagers. You didn't have his records?

A: Just to be clear, when you're talking about records, what—

Yeah phone records.

A: no I don't recall getting his phone records.

App.pg661; lines 3-22

Trial counsel failure to suppress the cell phones, of CI and phone found at scene of drug bust, since the state failed to establish any connection through cell phones that the CI and applicant ever talked on the phone. Had counsel done so he would have known.

V. Failure to Object to Lay Opinion Testimony: (PCR Order Pg. 15-17)

Det.Grill was allowed to testify at trial that he knew applicant by his voice (App.Pg. 165-67), especially when Grill testified that he had conversations with applicant the prior to the day of controlled buy (App.Pg 168-69) despite the court decision the Detective offered nothing more than speculation how on this day he knew it was the applicant he heard in the video tape. While I am inclined to agree with the states position on this, one factor must be considered when it comes to this issue. That is the Detective has no independent knowledge of applicant voice other than saying when he sees applicant they have conversations, but at no time could the detective prove or support this with anything other than his own words.

Prejudice:

Trial counsel allowed Det.Grill to testify that he was a member of the DEA task force since 2009 and had received specialized training. But at no time did the state qualify him as an expert (App.Pg 132-39) but the pcr court took the liberty of doing so. This is incorrect; the pcr court cannot correct the deficiencies of the trial court especially when as in this case none the parties sought to do so at the time of trial.

Det. Grill testimony was that he was on the DEA task force in 2005 and was working narcotics division over two years (2007-08) then went to DEA in 2009 (APP.pg. 165; lines 1-25; pg. 166; lines 1-10) grill said he knows my voice!!

Prejudice:

Trail counsel failure to object to prosecutor vouching for Grill knowing my voice (App.pg 476; lines 2-5) Because had counsel in formed the court that the applicant was in federal system in 2006 and came home in 2011 and never went around the community as Grill stated and never talked to Grill. Then this would weigh heavily on the credibility of Detective, as well as the fact. It is clear Grill was only in the community as he said from 2007-09 (App.pg. 169; lines 4-14) while applicant was incarcerated. Grill testified he recognized my voice on video (App.pg.189; lines 1-25). **However, the CI said he got a glimpse of applicant and he wasn't sure he saw applicant in that window** (APP.pg. 224; lines 9-16; pg.225; lines 13-18) this testimony about voice recognition is outside the expertise of Det.Grill, and since he did not have specialized training to do so his testimony was prejudicial.

VI. Chain of Custody (PCR Order App. pg.794)

Counsel did not object to the chain of custody evidence, that applicant never saw until trial. At the PCR hearing applicant averred that Officer Tugis was part of that chain of custody for the

drugs, but Tugis was not available at trial for applicant to confront him. (App .Pg. 374). At trial Officer Burke testified that he received the drugs from CI Drayton which tested positively for the presence of cocaine (Tr.Tr.Pg 275), and stated based on his experience it was cocaine and not cocaine base. (App.Pg 275-76). Investigator Burke also testified that he bagged and sealed the drugs logged it into the evidence computer and placed it in mail box. (App. pg. 276-77) on cross-examination agreed that the handwriting on the label was that of his partner Tugis. (App. pg. 319). This fails to satisfy the confrontation clause right of the applicant when he is clearly the one who placed the drugs into the bag not Burke.

In State v Cain, 419 S.C. 24 (2017) which controls the disposition of this issue, counsels that the state may not obtain a conviction when its proof as to any element requires the jury to speculate or guess whether the defendant engaged in the conduct.

Prejudice:

The drugs in this case were tested to be powder cocaine, which is the Ci drug of choice, and would know the difference between the two. Further, the CI testified that he gave the drugs to Det.Burke who tested it for cocaine. Tugis name was listed on the evidence bag, but no reports from Tugis were ever presented at trial or to counsel, nor was he present at trial. Once again trial counsel was made ineffective by the actions of state. See, State v Hatcher, 392 S.C. 86(2011) [Standard of review law& analysis]

VII. Jury Misconduct: (PCR Order App.pg 797)

The applicant testified that one of the jurors was allowed to be seated on his jury and she Ms. Stewart intentionally failed to disclose the fact that her son had prior drug related offenses or that she knew the applicant.

During trial, counsel never informed applicant that he felt someone on jury was looking applicant up on social media. Trial counsel never informed applicant that Shadeana Seagers, who is applicant sister, told trial counsel; that she knew Ms. Mary Stewart who was on the jury applicant sister told trial counsel that applicant was in a relationship with Ms. Stewart daughter and the relationship ended on bad terms. Years later counsel did informed applicant about conversation he had with his sister and that he thought applicant sister had told Ms. Stewart was on jury. See, State v Miller, 398 S.C. 47 Crim.law key (1) 2012); State v Rowell, (crim. Law key 1-13) (2024)

Trail counsel was ineffective for failing to research notify the client of polling the jury, depriving the applicant of his polling rights is not a technicality but material prejudice. See, State v Wright, 432 S.C. 365 (2020)

Prejudice:

The denial of applicant substantial right to an individual poll of each juror in open court, where each juror must express his or her continued assent in the announce verdict is reversible error per se, not subject to harmless error analysis.

VIII. Speedy Trial: (PCR Order App.pg 788)

MS. Linder was also a witness on case, had full control of all applicant speedy trial hearings and delaying the trail dates after she prepared the case for trial, and after the applicant rejected the plea offers in June 2013. However, she testified she never prepared the case for trial. (App.pg.633; lines 12-13; pg.622; lines 7-25; pg.623; lines 1-19)

The applicant argued at hearing that counsel was ineffective, for not moving for a mistrial. But based on the order the court ruled that **"He testified trial counsel never moved to dismiss based on a speedy trial violation, and the trial court questioned counsel about why he did not move for a dismissal speedy-trial."** Contrary to court contentions, the applicant proved that counsel never moved for a speedy trial when the court told counsel that he should have done so earlier, but since he failed to do so the court was denying his motion for speedy trial dismissal. **(App.pg.15; lines 19-25; pg.16-18; lines 1-14)**

IX. Trial Counsel Failure to Call Witnesses

Trial counsel failed to call Ms. Linder to the stand at trial for unknown reasons, along with letting Ms. Linder stay in the courtroom after the judge asked trial counsel if he wanted her sequestered.

Prejudice:

Ms. Linder testified to being on the scene working with the Charleston police department, viewing the evidence and prosecuting the case.(App.pg 634; lines16-25; pg.635; lines 3-17) In doing so Ms. Linder favored everything in the case and was present at all hearings and trial. Trial counsel failure to call Ms. Linder to the stand so he could cross-examine her as pcr counsel did at pcr hearing and Ms. Linder admitted the unethical conduct like not turning over evidence to the new prosecutor in 2015.

Moreover, Ms. Linder at hearing testified that the case was weak and insured that applicant bond remained exceptionally high at $2.5 million, as well as, fact that as she testified at hearing that she was the reason the speedy trial was constantly post-poned, because she wanted to see the outcome of co-defendant case. After Mr. Dennis plead guilty and wrote a letter that completely

exonerated me of the crime in 2013, Ms. Linder still refused to drop charges, and according to counsel it was only to have leverage on applicant as it relates to the pending charges. (App.pg.737;/763;#12-GS-10-06780/06781)

Had counsel called Ms. Linder to testify, and then applicant would have known what charges was being used against him. Since applicant was writing counsel in June 20th, 2013 and these documents were admitted at hearing. As noted, none of the documents for the LWOP sentence were submitted to new prosecutor or defense counsel but more importantly the court (PCR order pg. 785)

Mr. Sowards: Your honor, he has an assault while resisting arrest, a 2000 PWID, a 2000 proximity charge, and 2000 resisting arrest. He has a 2001 marijuana conviction and trespassing conviction. He has two PWID convictions in 2003, one with proximity. He has in 2007 Federal gun conviction, possession with intent to distribute marijuana, possession with intent to distribute cocaine, then maintaining a residence for the purpose of drug distribution.

Trial counsel failed to call Ms. Linder to the stand at trial for unknown reasons, along with letting Ms. Linder stay in the courtroom after judge asked trial counsel if he wanted her sequestered.

Ms. Linder testified to being on the scene working with the Charleston police Department, viewing the evidence and prosecuting the case. (App.pg. 634; lines 16-25; pg.635; lines 3-17) in doing so Ms. Linder favored everything in the case and was present at all hearings and trail. Trial counsel failure to call Ms. Linder to the stand so he could cross-examine her as pcr counsel

did at hearing and Ms. Linde admitted the unethical conduct like not turning over evidence to the new prosecutor in 20105.

Pcr court determination counsel was not ineffective for not calling Mr. Dennis and Mr. King is not supported by the evidence, since Mr. Dennis was at the courthouse the day of trial, or Mr. King who was the one who took his uncle to the lawyer's office to give statement.

Prejudice:

Accordingly, Ms. Linder was sequestered and should not have been at trial despite being the supervisor of the drug unit, with her being in the courtroom she became privy to the testimony, of the witnesses and in so doing her testimony at trail would be tailored to support or refute what was being testified too at trial. As such, counsel not calling her, did not reveal some of the constitutional violations addressed in my motions to dismiss. **(App.pg.727-36)**

Counsel failure to call Mr. Dennis was prejudicial, especially in light of fact that Mr. Dennis wrote letter claiming the drugs in residence. (App.pg. 737) which counsel was aware of at time of trial (App.pg. 598; lines 25; pg. 599; lines 1-16) this was prejudicial to applicant, to have counsel not pursue a witness who would create reasonable doubt about the guilt of the accused. Especially considering counsel testified his defense was reasonable doubt. (App.pg. 594; lines 22-23) similarly, counsel failed to call Mr. King who was related to the witness. His testimony was relevant to refute any notion that applicant had anything to do with threatening him or was the one behind having Ci go to lawyer office to file statement (App.pg. 612-619)

App.Pg 250; lines 1-15

X. Failure to Inform Client about CI

Trial counsel was ineffective for not advising applicant that the CI had pending charges against him but at trial CI testified that he was not working off charges (App.pg 231;lines13-14;Pg.218;lines16-18). But Det.Burke testimony contradicts that of the CI, whereas, Det.Burke testimony was essentially that the Ci was caught in a prior drug related offense(App.pg 315-316;lines 1-25 the detective also testified that had the CI not done so the charges was still pending that could have been readdressed. State testified that C.I. was being paid and had charges pending against him, (App.pg. and prosecution made counsel ineffective when they failed to turn over these documents to counsel **Auten, id, at 478(3) (4)**

Trial counsel was made ineffective by the state when they failed to disclose to counsel that the CI was threatened. The Ci testified after Jackson v Denno hearing that he was threatened and taken to the lawyer office by a friend(App.Pg.219;lines 6-25), but at PCR hearing Mr. King testified that the CI was his uncle and that he took him to the lawyers office. See, State v Brown, 441 S.C. 464 (crim. Law key (3) (6) (7) (10) (11)) (2023); State v Mizzell, 349 S.C. 326 (crim. Law key (8)) (2002). The Ci also said at trial never saw the statement, but was telling lawyer what to say (App.pg.220; lines 15-21)

Under State v Dean 427 S.C. 92 (crim.law key(6) (8) (9) (10) (11) (13) (14)) (2019); State v Adolphe, 314 S.C. 89 (crim.law key(4) (5)) (1994)our appellate court ruled that, the trail court did not committed reversible error of law in granting a new trial in prosecution for First degree Burglary, Grand Larceny, and malicious injury to real property when the state allegedly committed discovery violation by not disclosing agreement between the state and witnesses, who had been arrested for a separate burglary, in exchange for testimony against defendant, in violation of the right under the Sixth Amendment to the United States Constitution to cross-examine witnesses, where witnesses cross-examination left jury with impression he was not

testifying for any personal benefit, wit was the only witness linking defendant to burglary, and evidence that witnesses received reduction on charges and leniency in sentencing in exchange for cooperation was discovered after trial and sentencing.

Prejudice:

Counsel said it surprised him the day of trial that the Ci said he was threatened and he wish he had objected during closing arguments and **he didn't move for a mistrial because of sheer shock and he didn't react quickly.**

The prosecution violated Brady v Maryland, 373 U.S. 83 (1963) when they failed to inform the defense that the CI was working off charges, especially when the documents submitted were conflicting with the testimony at trial an officer said he circled both to avoid forging documents in fact the testimony at hearing suggest the same document says pending Distribution cocaine on the CI (App.pg. 672-73) and Ms. Frierson testimony was that:

Q: okay, and so Mr. Drayton, did he have charges at the time?

A: I want to say he—I can double check, I don't recall. I know he was a paid informant for purposes of this buy, but I don't—I could look back at the transcript and let you know.

App.pg.pg 648; lines 20-25; App.pg 679 **{Confidential Informant Documentation subsections 1-6}**

For this reason, it is my contention that counsel was unable to pursue this line of questioning during cross when this information was never revealed to counsel. **(Appp.pg.672-675)** all of these documents were never given to counsel at trial and detective Grill was asked during trial.

Q: And you don't know why that wasn't provided to me at my request, is that correct?

A: Yes, sir, I—I do

App.pg 181; lines 15-20

Detective Burke testified at trial that:

Q: Okay. So you've testified that he was not working off charges, correct?

A: Correct. He was never charged.

Q: is it fair to say he was working off potential charges? Charges that that you were contemplating?

A: No, because he—after the initial debriefing, he was paid immediately. He—he went form anything dealing with charges to a paid informant and that was within a matter of an hour.

App.pg. 315; lines 24-25; pg. 316; lines1-7

Prejudice:

The charge say cocaine, before it was changed to crack, meaning that CI form was wasn't filled out within an hour, especially after Burke stated they did many other things. **(App.pg. 672-75)**

But it is not possible for the state not to know that CI was working off charges, and prosecution had an obligation to correct misinformation the officer was testifying too. In light of the fact Det.Burke testified that had the CI not continued to assist the police these charges would be addressed (App.pg 315; lines 10-12)

It is unethical for the prosecution not to vet their own witness before allowing their testimony before the jury but in case at bar the prosecutors all testified they never spoke to witness before he testified at trial (App.pg. 649; lines 7-25)

Second, under State v Adolphe, the state failed as in Adolphe and herein, to establish the reliability of the CI, the Ci in case at bar told lies in prior statements before trial to the point judge Harrington said-there has been no **evidence presented that witnesses have made prior statements which are not inconsistent with witnesses present testimony and you may also use evidence of earlier contradictory statements to determine truth of statements.**

Third, the violation of Brady likewise occurs when the states witnesses. Burke, Det. Grill and forensic analyst testified at trial they were told not to prepare reports. (App.pg 41; lines 6-16; pg. 172; lines 19-25; pg. 380; lines 9-16) The withholding of this information made counsel ineffective and such actions tip the scales in favor of the prosecution to win at any costs. Thus, the state cannot now claim that counsel was not ineffective when they contributed to the verdict.

State v Brown, 441 S.C. 464 (2023); Giglio v United States, 405 U.S. 105 (1972) {the state plea negotiation with co-conspirator who was its key witness favorable impeachment evidence under Brady, and these negotiations were material under Brady}

XI. Hands of One Hand of All

What is even more shocking is that it was not counsel who requested the Hands of one hands of all charge but the prosecutor, the following colloquy took place as follows:

The Court: And are you requesting hand of one?

Mr. Sowards: That's correct, you're Honor

The Court: All right, and Mr. Marshall, you would object to the inclusion of the hand of one?

Mr. Marshall: Yes Ma'am.

The Courts: All right, I will be charging hands of one based upon the testimony that was presented!! Note your exception!! No lesser included

App.pg 449; lines23-25; pg.450; lines 1-9

While it is unclear as to why, the state requested this charge. One thing that resonates well with the facts of this case is that, the state changed the theory of the case based on the uncorroborated, and credibility issues with the CI and police. Which all parties agreed that this was a weak case (App.pg 599; lines 11-12)[1]

The CI testified at trial as follows:

Q: Is it possible that you could be mistaken in believing that you saw him?

A: I could be, I don't know, but I just saw his head.

App.pg 225; lines 17-18

Prejudice:

Because the CI kept changing his testimony testifying that more than one person was in the house that he never entered and couldn't see who was in the house since the window was on the

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[1] **The Trial court instructed the jury as follows:**
If you find after reviewing all the evidence that the state has proved that the defendant was present at the scene of the crime and that they have not proved beyond a reasonable doubt any other participation in the crime, you must find the defendant not guilty. The law is proof of at the scene of the crime is not sufficient to find someone guilty
App.pg. 503; lines 1-8
Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short of time was available, how far or close the witness was, the lighting conditions and whether the witness had a chance to see or know the person in the past...
App.pg. 503; lines 15-25

second floor and the Ci testimony was that he never saw who sent down the cup (App.Pg 223; lines 1-25; Pg.224; lines1-25)

Most importantly, the CI testified at trial he was not working of charges, (App.pg. 672-373) but he CI form sheet also says he had pending charges as written on the CI form as well as the fact he was being paid and both are circled(App.pg.23; lines 13-14)

What is even more shocking is that it was not counsel who requested the Hands of One hands of all charge but the prosecutor, the following colloquy took place as follows:

The Court: And are you requesting hand of one?

Mr. Sowards: That's correct, you're Honor

The Court: All right Mr. Marshall, you would object to the inclusion of the Hand of one?

Mr. Marshall: Yes Ma'am

App.pg. 450; lines 1-9

While it is unclear as to why, the state requested this charge. One thing resonates well with the facts of this case is that, the state changed the theory of the case based on the uncorroborated, and incredibility issues with the CI and police. Which counsel testified at hearing this was a real weak case. (App.pg. 599; lines 11-12)

Prejudice:

Under State v. Johnson, 438 S.C. 110 (2022); State v Sellers, 442 S.C. 140 (2024), applicant argues the trial court violated his due process rights by instructing the jury on the theory of accomplice liability, specifically the hand of one is the hand of all because the state presented no evidence applicant acted in concert with another. Three Statements from the trial court charge must be presented, due to the fact that Ci consistently changed his testimony that more than one person was in the house that he saw. But oddly, he never entered the residence and couldn't see

who was in residence since window was on the second floor and the Ci testimony was that he never saw who sent down the cup (APP.pg.223; lines 1-25; pg. 224; lines 1-25)

Prejudice:

An accomplice liability charge was not proper because the evidence is not equivocal as to whether applicant was involved in the drugs found at the scene-all the evidence presented only showed applicant was on the scene and the Ci testimony is not credible for the reasons set forth in this brief. Additionally, the record contains little evidence of mere presence at the scene is not sufficient and the state requested the hands of one charge it was another attempt to hold the flimsy case together by using a charge that would tie applicant to the drugs. In light of fact, the state had no evidence linking applicant. Applicant's presence where a crime is being committed or mere association with person's committing a crime does not make applicant an accomplice or aider and abettor of the person committing a crime.

Legal Analysis[2]

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[2] 1. State v Dean, 427 S.C. 92n. (3) (6) (7) (10) (11) (2019); Gigli v United States, 405 U.S.105, 92 S.CT.763 (1972); United States v Bagley, 473 U.S. 667,675, 105 S.CT. 3375 (1985)

2. State v Brown, 441 S.C. 464, 894 S.E.2d 525 (2023): **[The state plea negotiation with co-conspirator who was its key witness were favorable impeachment evidence under Brady, and these plea negotiation were material under Brady]**

3. State v Wright, 432 S.C. 365, 852 S.E.2d 468 ((2020)[The denial of defendants substantial right to an individual poll of each juror in open court is reversible error per se]

4. Stevens v State, 617 S.E.2d 366 (2005) **[Plea attorney's failure to consider whether defendant was properly charge]**

5. Watson v State, 287 S.C. 356, 357, 338 S.E.2d 636 (1985); Patrick v State, 562 S.E.2d 609 (2002); Chubb v State, 401 S.E.2d 159 (1991)[Counsel failure to inform defendant of his right to request the impaneling of a jury to consider recommendation of mercy on burglary charge constituted ineffective assistance of counsel]

6. Berry v State, 675 S.E.2d 425 (2009) [Counsel failed to inform defendant of his prior convictions]

7. State v Hatcher, 382 S.C. 86, 708 S.E.2d 750 (2011) [Standard of review/ law & analysis] (PCR order pg.32)

8. State v Williams, appellate case # 2011-2011-12**[Mr. Williams actions during plea negotiations, and his testimony during the pcr hearing reflects that he did not understand**

Applicant is asking the court employ the cumulative analysis that other state/federal courts are employing, and based on the facts presented in this brief and during the pcr hearing. It is clear that court should not accept the lower court findings of facts and conclusions of law which is not supported by record.

However, let the record also reflect. That despite appellant arguing thae cumulative effect of counsel errors deprived applicant of a fair trial, it is clear to appellant that the cumulative analysis does not apply to Cronic claims of state, and court making counsel ineffective in case at bar.

Prejudice:

First, **counsel testified that he did not make objections because the court was denying all his motions and granting all of the state motions.** Thus, it is clear that when court engages in actions that tip the scales of justice to one side the adversarial process because a sham and mockery that deprives the accused of his right to counsel and a fair trial.

Second, the testimony at hearing reveals and supports applicant contentions that the prosecution actions violated applicant due process and right to counsel. When prosecution instructed the witnesses not to write reports, violates Brady, as the testimony of witnesses reveals as one officer stated his files are on a hard drive that is in another state but not brought to trial or given to the prosecution and never submitted to the defense. Similarly, the other forensic expert of state

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that LWOP meant mandatory LWOP! Trial counsel actions during plea negotiations bear out this stated belief because he rejected a 3-year deal, 5-year deal and a 10-year deal! Also nowhere on the state's notice of intent to seek LWOP did it say that LWOP was mandatory sentence (PCR order pg. 20)]

9. Apprendi V New jersey, 530 U.S. 466 (2000)
10. United States v. Auten, 632 F.2d 478 (5th Cir.1980)
11. Lafler v Cooper, 132 S.ct.1376, 1384 (2012)

clearly testified that she was told not to do so because she was coming to testify, but this action hinders defense from conducting their own investigation.

Appellant is asking that the courts employ the cumulative analysis that other state/federal courts are employing, and based on the facts presented in this brief and during the pcr hearing. It is clear that court should not accept the lower court findings of facts and conclusions of law which is not supported by record.

Likewise, the prosecution also made counsel ineffective when they fail to reveal to defense that the star witness was threatened by defendant not to testify. The Ci testified after Jackson v Denno hearing that he was threatened and taken to the lawyer office by a friend (App.Pg.219; lines 6-25). Instead the prosecution brought this out during direct-examination and basically sandbagged counsel with this information which counsel was unaware of. None of this information was substantiated because the court never asked counsel if this witness came to his office and counsel denied this accusation by witness that he came to his office to change his testimony

The prosecution is also guilty of the highly inflammatory comment made during closing that inflamed the passions of the jury and attacked the credibility of applicant while bolstering the credibility of its own witnesses.

Similarly, prosecution as noted failed to file the notice to seek LWOP sentence in the court. because let the record reflect, all things being equal, that if no one else has a copy of this motion, the one place that should have this motion is the court clerk and they did not have a copy of this file. Despite pcr counsel could not locate this motion in prosecutor office, defense counsel, and clerk of court. All of which have claimed they did not have this motion in their files, so it must

be asked Why did the state and defense counsel not have this motion, all they have produced was the fact that defense and defendant signed for the proof of service document. But counsel could not definitively testify that he had a copy of this motion.

Q: Okay. And in terms of the LWOP notice, do you recall getting served LWOP notice?

A: You know I did not see it in my file, but I can't imagine that I wouldn't have gotten it. I mean if I didn't then that is a problem

Q: That is something you would have raised if it came up at trial, and you had never seen the notice?

A: In would like to think I would have, because that would—that wouldn't be good for a lawyer not to get that.

App.Pg. 596; lines 12-21

Q: But again—so no specific recollection of actually seeing the LWOP notice?

A: No, No specific recollection.

App.Pg 602; lines 2-4

Finally, while most of the facts presented are based on others actions counsel shares in some of the blame that denied appellant the right to counsel and a fair trial, especially when as herein, counsel never put the prosecution case to the full adversarial test because of his actions, the court, and the prosecution

Applicant has addressed the facts that support his contentions that counsel was ineffective through his own actions as well as that of the prosecution and court. Thus, in our legal analysis

we must address the legal and prejudicial aspects of the errors that deprived applicant of a fair trial. Likewise, applicant will point out that the cases respondent cites in the order are misplaced and inapplicable to case at bar. While applicant asserts that, while he cites Cronic it is only for the sole proposition that state, counsel testified that he did not make objections because the court was denying all his motions and granting all of the state motions.

While it is unsettled law whether individual errors, which may not be independently prejudicial when taken as a whole, applicant recognizes the threshold to asking the cumulative prejudicial question is to first find multiple errors multiple errors exist in this case to form a cumulative prejudicial effect.

Therefore, when we examine whether trial counsel gave effective assistance, we examine all aspects of the counsel's performance at different stages, from pretrial proceeding through trial and sentencing. Separate errors by counsel at trial and at sentencing should be analyzed together to see whether their cumulative effect deprived the defendant of his right to effective assistance, they are in other words, not separate claims, but rather different aspects of a single claim of ineffective assistance of trial counsel.

In South Carolina, the issue of whether cumulative prejudice analysis applies to multiple Strickland vs Washington, 466 U.S. 668 (1984) claims of ineffective assistance of counsel in pcr appeals remains an unsettled question. See, Walker v State, 397 S.C. 226, 243 n.5 (Ct.App.2012); Lorenzen v State, 376 S.C. 521 n.3 (2008) South Carolina Supreme Court and South Carolina court Of Appeals have both mentioned cumulative prejudice analysis on several occasions, however, some circuit judges have in Pcr cases recognized the analysis in granting

relief for ineffective assistance of counsel before being reversed by either Court Of Appeals or South Carolina Supreme Court. Lorenzen, id, at 535,

Thus, it is clear that when court engages in actions that tip the scales of justice to one side the adversarial process that deprives the accused of his right to counsel and a fair trial. See, Liteky v. United States, 510 U.S. 540 (1994); United States v Weaver, 2892 F.3d 302 (4th Cir. 2002) the prejudicial aspect of court actions is reflected in counsel testimony when he testified that;

A: .....I was trying to reserve my strongest objections because every objection we had was being overruled, I think literally, throughout the entire week. And every objection the state made was sustained, and I think that is without exception.

App.pg 604; lines 19-24

Any thoughts of impartiality on the part of court was erased by the actions and proven at hearing by testimony, such actions render any notion of due process a mere catchall phrase**. Liteky, id, at 544;** United States v. Wilson, 135 F.3d 291 (4th.Cir. 1998); Querecia v United States, 289 U. S. 466, 469 (1933)

A) Cumulative Analysis and the United States Supreme Court

State courts have diverged in their interpretations of the two-pronged Strickland test for ineffective counsel claims in the thirty years following seminal cases cited hereinafter. See, Schofield v Holsey, 642 S.E.2d 56, 60 n.1 (GA. 2007); Telequz v Warden of Sussex 1 State prison, 688 S.E.2d 865, 879 (VA. 2010) A small minority of states has explicitly held that courts must apply the Strickland test on each claim of ineffective counsel individually. See, Echols v State, 127 S.W.3d 486, 500 (Ark.2003); Robertson v State, 367 S.W.2d 538, 542 (Ark.2010)

Thus, in these jurisdictions courts conclude that defense counsel provided constitutionally inadequate assistance only when at least one claim of counsel error satisfies the two-pronged test on its own. Robertson, id, at 542. Conversely, courts in a majority of states have either recognized or plainly adopted some form of cumulative analysis for reviewing ineffective counsel claims. See, Brooks v State, 929 SO.2d 491, 514 (Ala. Crim.App.2005); State v Savo, 108 P.3d 903, 916(Alaska Ct.App.2005); In Re Jones, 917 P.2d 1175, 1196 (Cal...1996); Burns v State, 76 A.3d 780, 790-91 (Del. 2013)

Although some slight variations exist among these state courts, cumulative analysis generally entails the consideration of multiple claims of trial counsel errors through either the deficient performance or prejudice prong of the Strickland test. See, Harris v Wood, 64 F.3d 1432, 1438-39 (9th Cir. 1995); Bowers v state, 578 A.2d 734, 744 (Md. 1990) Some courts have concluded that, while specific types of error by trial counsel may not amount tom deficiencies under Strickland, the " fundamental lack of formulation and direction in presenting a coherent defense" can establish deficient performance under the first prong. See, Stouffer v Reynolds, 168 F.3d 1155, 1162-65 (10th Cir.1999); Dyer v Crisp, 613 F.3d 275, 278 (10th Cir. 1980); United States v Haddock, 12 F.3d 950, 955 (10th Cir.1993) Many courts have questioned whether multiple counsel deficiencies, each failing individually under the prejudice prong of the Strickland test, nonetheless violated the defendants right to a fair trial when viewed in the cumulative manner. Savo, id,

Under Stevens v State, 617 S.E.2d 366 (2005) court found that because the defendant likely would not have pled guilty to all eighteen counts and may well have received a lighter sentence if the court had four or five counts before it rather than eighteen., Stevens, id at 368.,

B) Strickland language supports cumulative review

The language of the Strickland opinion suggests that the Supreme Court anticipated that appeals would involve multiple claims of deficiency by counsel and that courts should review the resulting prejudice cumulatively. Strickland, id, at, 690, (Citing United States V Bagley, 473 U.S. 667,683 (1983)

In the deficiency prong of the two-part test, the court specifically focused on defense counsel's "Performance" Strickland, id, at 687,. As professor Blume& Christopher Seeds argue," the cumulation of deficiencies begins in the first prong." See, Reliability Matters; Reassociating Bagley Materiality, Strickland prejudice and Cumulative Harmless Errors, 95 J.Crim.L&Criminology 1153, 1165; John Blume & Christopher Seeds (2005) Additionally, the court elaborated on the overall performance of counsel during representation, holding a defendant proves deficient performance by showing that "counsel made errors so serious" that the defendant was deprived of the constitutionally adequate representation guaranteed by the sixth amendment. Strickland, id, at, 687,.

A similar choice of words is present in the prejudice prong of the Strickland test. Strickland, id. The court noted that the "defendant must show that the deficient performance prejudiced the defense." Further, the court explained that the second prong is satisfied when the defendant proves that "counsel's errors was so serious as to deprive the defendant of a fair trial, a trial whose result is reliable "lower courts have particularly looked to the use of this language and the plural use of "errors" to find each individual counsel error should not be viewed in a vacuum. See, Schofeld v. Hosley, 642 S.E.2d 56, 60 (GA.2007); Exparte Aguilar, 2007 WL3209751.n3 (Tex. Crim. 2007). Indeed. One could easily discern a directive from the court for a separate,

individual review of each claim of deficient performance under Strickland if the majority had chosen singular words such as counsel's error or action. Strickland, id, at 687,.

Along with using the words in the plural form throughout its discussion of the Strickland standard, the court emphasized that lower courts should remember that the principles laid out in the opinion must not facilitate the judicial construction of" mechanical rules" Strickland, id, at 696; Ruth A. Moyer, To err is Human; To Cumulate Judicious; The Need for United States Supreme Court Guidance on Whether Federal Habeas Courts Reviewing State Convictions may Cumulatively Assess Strickland errors, 61 Drake. L. Rev. 447, 466-76 (2013)

Rather courts reviewing ineffective counsel claims must **"consider the totality of the evidence"** that was presented to the fact finder. Strickland. Id, at 695,. Merely dissecting and distinguishing each individual deficiency contravenes the fundamental focus on considering whether the proceeding as a whole was just and reliable. Strickland, id, at 686,. Indeed, the court stressed that the "**ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged."** Moyer, id, at 484,. Thus, the courts rejection of formalistic rules accompanying individualized reviews signals the courts acceptance of cumulative analysis of multiple claims of ineffective assistance. Moyer, id, at 485,.

C) Supreme Court precedent approves of cumulative analysis

Additionally, other Supreme Court precedent further demonstrates that courts should review ineffective counsel claims cumulatively. Blume & Seeds, id, at 1171. As early as 1935, the court approved of cumulative analysis for certain trial errors-specifically, in the context of reviewing claims of prosecutorial misconduct. See, Berger v United States, 295 U.S. 78 (1935) the court reversed and remanded for new trial holding that a prosecutors misconduct was not

"slight or confined to a single instance" but was, in fact, pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded or inconsequential. Berger, id, at 89.

As Blume& Seeds argue, the various suggestions of the court accepting cumulative prejudice reviews for ineffective counsel claims began with United States v Bagley, 473 U.S. 667 (1985) which was decided in the term immediately following the Strickland decision. See, Blume& Seeds, id, at 1167, 1169; Bagley, id, at 681; United States v Valenzuela-Bernal, 458 U.S. 858, 874 (1982) In Bagley, the court adopted the Strickland prejudice test for appeals, previously controlled under Brady regarding the materiality of evidence suppressed by prosecution. Bagley, id, at 682-83; Valenzuela-Bernal, id, at 874,. Mirroring the Strickland prejudice prong, Strickland, id, at 687, .the court held that evidence withheld from the defense by the prosecution i s "material only if there is a reasonable possibility that had the evidence been disclosed to the defense, the result of the proceeding would have been different." Bagley, id, at 682,.

Ten years later, a majority of the court mandated a cumulative review of multiple Bagley materiality claims. In Kyles v Whitley, 514 U.S. 419 (1995) the court ruled that the Fifth circuit erred in analyzing materiality by focusing individually on separate pieces of suppressed evidence. Kyles, id, at 422,. The court unequivocally emphasized to lower courts that pieces of suppressed evidence must be "considered collectively, not item—by-item." Accordingly, the majority in Kyles reversed the appellant's conviction and held that the "net effect" of suppressed evidence undermined confidence in the reliability of the jury's verdict. Kyles, id, at 437, 453,. Given that Strickland and Bagley are inextricably linked by their prejudice tests. Bagley, id, at 682, the courts position in Kyles demonstrates that it would also likely approve of cumulative prejudice analysis in ineffective counsel claims. Blume & Seeds, id, at 1169,.

Conclusion

In assessing multiple Strickland claims of ineffective assistance of counsel, courts should consider the cumulative prejudicial effect of multiple attorney deficiencies. A majority of courts around the nation have reached this conclusion. On numerous occasions, the South Carolina judiciary has come close to joining that majority. The wide-ranging suggestions of support for cumulative review from the United States Supreme Court, as well as, courts' around the country are further proof of the need for its recognition in South Carolina. Due to the persistent problems occurring in individualized Strickland reviews as well as the issue of differing claim definitions, cumulative prejudice analysis is necessary to provide consistent reviews of multiple claims of ineffective counsel for all pcr applicants. In adopting cumulative review, South Carolina will take a crucial step forward in its pcr process to ensure that all criminal defendants receive fair review of their fundamental constitutional rights to effective counsel and a just proceeding.

Wherefore, it is prayed court grant writ

Dated: 10 day of OCTOBER, 2024,

Respectfully Submitted;

S/ Dean Seagers

Dean Seagers/ Pro Se

The State OF South Carolina

In The State Supreme Court

Certiorari to Charleston County

Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2024-000213

Dean Seagers,

Petitioner,

Vs.

State Of South Carolina,

Respondent,

Proof of Service

I, **Dean Seagers,** being duly sworn say that:

A copy of the within **Pro Se Brief** of Petitioner was served on the respondent at the following address: **C/O Ninth Judicial Circuit PCR Division; Post Office Box 11549;Columbia, South Carolina 29211**, by first class mail. On this 10th day of October, 20 24,

Date: ____ day of _____, 20____,

Respectfully Submitted;

S/ Dean Seagers

Dean Seagers/ Pro Se

OCT 10, 2024

To The Courts,

Im writing because I was giving 45 Days to do my Johnson Brief on Aug 7, 2024. Im currently at Lee County Prison in a LockDown Unit / F2 A, meaning anything that goes on bad, F2 is getting Lock Down. I was giving a pass to go to the Library EveryDay, But Due to the LockDowns on Sept 8, 2024 because some Guys got stab. We was on LockDown From Sept 9, 2024 Till Sept 16, 2024. Then on Sept 17, 2024 someone got kill and we was LockDown From That Till Sept 20, 2024. Then on October 7, 2024 another Guy got kill and We're still on LockDown now on Oct 10, 2024!! Also Due to Hurricane Helen & Milton, everyone in F2 cant do no movements to the Library or Computer Rooms to finish my Legal work / Brief. Even though I have a Court Dead Line Pass, Im still not and wasn't able to complete my Brief in a Timely Fashion matter. Can Yall please put this on the record so my Brief wont get Denied while Im Fighting this Life Sentence!!

Thank You Very Much,

Dean Seagers

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